

## **REMARKS**

### **Amendments**

Claim 32 is amended to depend from claim 31, rather than depending from itself.

### **Restriction Requirement**

Applicants acknowledges the Restriction between Group I (claims 8-50 and 52-57) and Group II (claims 51 and 58), with election of Group I by original presentation. With respect to non-elected method of use claims 51 and 58, upon determination of allowable subject matter for Group I, applicants request rejoinder of claims 51 and 58, pursuant to MPEP §821.04.

### **Incorporation by Reference**

In the objection, it is argued that the incorporation of “essential” material by reference is improper. The objection specifically refers to the incorporation of the Japanese priority document at page 11 of the specification.

However, the objection never indicates that the incorporated subject matter is “essential.” As described in MPEP 609(p)(I)(A), essential material is defined as material required to comply with the requirements of 35 USC 112, first paragraph. Applicants’ disclosure satisfies the requirements of 35 USC 112, first paragraph, without relying on the disclosure in the Japanese priority document. This is supported by the fact that the Office Action does not present any rejection under 35 USC 112, first paragraph. Thus, the incorporation of the Japanese priority document is incorporation of nonessential subject matter, not essential subject matter. Withdrawal of the objection is respectfully requested.

### **Rejection Under 35 USC §112, second paragraph**

Claim 32 is rejected for improperly depending from itself. Claim 32 is now amended to depend from claim 31. Withdrawal of the rejection is respectfully requested.

### **Rejection Under 35 USC §102(e) in view of Brieva et al. (US 6,103,250)**

Claims 8-47, 50, and 52-57 are rejected as allegedly being anticipated under 35 U.S.C.

§ 102(e) in view of Brieva et al. (US 6,103,250). This rejection is respectfully traversed.

Enclosed herewith is a certified English translation of applicants' priority document Japanese patent application no. H11-177904 which demonstrates that applicants invented the claimed subject matter before July 6, 1999, the filing date of Brieva (US '250). Withdrawal of the rejection is respectfully requested.

**Rejection Under 35 USC §103 in view of Sakuta and Shin**

Claims 8-23 are rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta (EP 0 501 791) in combination with Shin (US 4,937,069). This rejection is respectfully traversed.

Sakuta (EP '791) discloses a group of silicone polymers that can be swollen with silicone oils to obtain pasty silicone compositions which can be used to stably and uniformly disperse water. See page 2, lines 5-8.

As described at page 2, lines 35-40 of Sakuta, in the cosmetics field, there are often used compositions which are formulated, not only with oils, but also with water. In such compositions surface active agents are usually added, which can irritate the skin. Moreover, it is said to be difficult to disperse silicone oils and water uniformly and stably. For this reason, one of the objects of Sakuta is to obtain "a pasty silicone oil composition wherein water can be uniformly, stably dispersed in the composition without use of any surface active agent." See page 2, lines 47-48.

The pasty composition of Sakuta is prepared by subjecting 100 parts by weight of the silicone polymer and 10 to 1000 parts by weight of a silicone oil to kneading under shearing conditions. The polymer, due to its good swelling properties in silicone oils, is said to provide a uniform pasty composition, when combined with silicone oils and kneaded as described. Further, this composition can disperse powders or pigments. To render the pasty composition useful as a cream or "cake-shaped molding" for cosmetics, the pasty composition can be dispersed in water without resorting to the use of surface active agents. See, e.g., page 5, lines 4-9 and 26-30.

From the above discussion, it is evident that, as it relates to cosmetic compositions, the disclosure of Sakuta is directed to aqueous cosmetic compositions wherein water is dispersed in the pasty silicone composition. This is also apparent from the Examples. In

each of Examples 1 - 4, water is added to the pasty composition to obtain a creamy composition. Also, Applications 1 and 2 on page 8-9, which involve water dispersed in the pasty composition, are directed to a face cream formulation and a makeup foundation formulation.

Sakuta thus does not disclose or suggest non-aqueous cosmetic compositions. Nor does Sakuta disclose or suggest a non-aqueous dermatic cosmetic for perspiration control comprising 50 to 500 parts by weight of an aluminum compound having perspiration control activity. Compare, e.g., applicants' claim 8.

In the rejection it is asserted that Sakuta does not "stipulate the compositions cannot be incorporated in an aqueous composition." Presumably, nonaqueous composition was intended. One can just as easily state that the disclosure of Sakuta does not stipulate that the composition can be incorporated into a non-aqueous composition. However, it is unnecessary for a disclosure to expressly stipulate a point in order for the disclosure to suggest that point. The discussion of the disclosure of Sakuta above clearly demonstrates the disclosure suggests using the composition in an aqueous composition and does not suggest, to of ordinary skill in the art, using the composition in a non-aqueous composition.

Similarly, the rejection asserts that the reference does not specifically state that the compositions are used only in aqueous compositions "therefore it may be used in non aqueous compositions." There is no support for this conclusion as there is no suggestion in the disclosure that would lead one of ordinary skill in the art to use a composition designed for use in an aqueous composition in an non-aqueous composition.

Concerning amounts by parts, the rejection states that "it is not clear because there is no final volume, weight or parts." Presumably, the rejection is referring to the disclosure of Sakuta since applicants' claim 8 specifically recites parts by weight. In any event, the claims clearly recite such features and claim language cannot be ignored. Thus, an obviousness rejection must demonstrate how this feature of the claimed is rendered obvious by the prior art. But, in this case the rejection fails to establish how the amounts of aluminum compounds recited in claim 8 are rendered obvious by the prior art.

Shin (US '069) discloses a substantially anhydrous semi-solid antiperspirant composition. As noted in the rejection, Shin disclose problems associated with the use of hydrous compositions. In light of such teachings and disclosure, the rejection fails to set forth

any rationale as to why one of ordinary skill in the art would look to a disclosure - which describes an anhydrous composition and the problems of hydrous compositions – to modify a composition designed for use in an aqueous composition.

The composition of Shin contain antiperspirant powder, a thickening/suspending agent containing fumed silica, a thickening/solid emollient, a nonvolatile liquid emollient/plasticizer, and a volatile emollient. See, e.g., column 1, lines 41-50.

The antiperspirant powder can be “astringent aluminum or zirconium compounds or complexes. See, e. g., column 2, lines 53-63. Suitable silica materials for the a thickening/suspending agent are described at column 4, line 11-column 5, line 7. The thickening/solid emollient can be “any non-toxic, non-irritating organic wax having a melting point greater than about 20°C to 120°C.” See column 5, lines 13-15. Suitable nonvolatile liquid emollients/plasticizers include silicone oils. See, e.g., column 5, lines 40-52. Suitable volatile emollients are cyclomethicones and volatile silicones such as certain cyclic dimethylpolysiloxanes. See column 6, lines 1-19.

Shin does not disclose or suggest a composition containing a silicone polymer made from an organohydrogenpolysiloxane and either a polyoxyalkylene or an organopolysiloxane. Such a silicone polymer is a major component of the composition described by Sakuta. Thus, Shin does not suggest modifying compositions such as taught by Sakuta.

In the rejection, it is asserted that it would be obvious to use aluminum compounds “in conjunction with” the composition describe by Sakuta in order to provide antiperspirant activity “when using the organohydrogenpolysiloxane in an antiperspirant cosmetic composition.” However, the prior art does not suggest such a use. Sakuta does not mention use of the disclosed compositions for an antiperspirant, and Shin does not suggest the use of a silicone polymer similar to the silicone polymer disclosed by Sakuta in an antiperspirant composition.

It is further asserted in the rejection that it would be obvious to use organohydrogenpolysiloxane in the Shin composition “to eliminate the problems of stability associated with oils ... by using a component that adsorbs oils such as silicone oils.” No support is provided for this assertion. The rejection does not indicate where in the prior art such a problem is described or where the use of a silicone oil to adsorb oil will address such a problem.

It is noted that applicants' specification beginning at page 1, line 27 describe the use and problems associated with using silicone oils. Further, beginning at page 2, line 6, applicants' specification describes the use of waxy agents in place of silicone oils.

It is also noted that one of the ingredients in the Shin composition is an organic waxy material. This material is said to "not only adsorb volatile and nonvolatile liquid emollients, but they also enhance ease of auxiliary applicability and are especially useful for improving slip." Thus, the waxy ingredient present in the Shin composition already provides the absorption feature stated in the rejection, as well as other desirable features. Thus, the rejection fails to describe any motivation that would lead one of ordinary skill in the art to replace the organic wax material in the composition of Shin with a silicone polymer made from an organohydrogenpolysiloxane, let alone the silicone polymer disclosed by Sakuta.

In view of the above remarks, it is respectfully submitted that the disclosure of Sakuta, alone or in combination with the disclosure of Shin, fails to render obvious the claimed invention. Withdrawal of the rejection is respectfully requested.

#### **Rejection Under 35 USC §103 in view of Sakuta and Powell et al.**

Claims 24-47, 50, and 52-57 are rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta (EP 0 501 791) in combination with Powell et al. (US 6,060,546). This rejection is respectfully traversed.

The disclosure of Sakuta is discussed above. As noted above, Sakuta describes a composition designed for use in an aqueous composition. This composition contains as a major component a particular silicone polymer made from an organohydrogenpolysiloxane and either a polyoxyalkylene or an organopolysiloxane.

Powell et al. disclose a non-aqueous silicone emulsion which comprises a silicone phase and an organic phase. The silicone phase comprises a silicone elastomer and a low molecular weight silicone compound. The organic phase comprises an organic liquid. The composition is described as being useful for personal care compositions. See the abstract.

The rejection asserts that Powell et al. disclose that the compositions they describe can contain aluminum compounds such as aluminum chlorohydrate, and also can contain ascorbic acid as an enzyme.

Yet, the rejection further acknowledges that Powell et al. does not contain an

organohydrogenpolysiloxane. The suggestion of using aluminum compounds and ascorbic acid in one type of composition does not suggest their use in significantly different compositions. As noted, the Powell et al. composition does not contain organohydrogenpolysiloxane, let alone the a silicone polymer made from an organohydrogenpolysiloxane as disclosed by Sakuta. Nothing in the Powell et al. disclosure suggests using aluminum compounds and/or ascorbic acid in compositions like Sakuta that employ a silicone polymer made from an organohydrogenpolysiloxane and either a polyoxyalkylene or an organopolysiloxane as a major component.

Similarly, Powell et al. provide no suggestion as to what amounts of such agents would be used in a composition containing an organohydrogenpolysiloxane. Compare applicants' claim 24 which recites certain amounts of vitamin C in parts by weight per 100 parts by weight of a specific silicone composition paste.

As a further note, while Powell et al. refer to their compositions as non-aqueous, the compositions in fact can contain water. See, e.g., column 3, lines 23-25 which states that in the context of the Powell et al. disclosure, non-aqueous means that the organic phase of the present invention comprises less than 50 parts by weight water per 100 pbw of the organic phase.

In view of the above remarks, it is respectfully submitted that the disclosure of Sakuta, alone or in combination with the disclosure of Powell et al., fails to render obvious the claimed invention. Withdrawal of the rejection is respectfully requested.

#### **Rejection Under 35 USC §103 in view of Sakuta and Kilgour et al.**

Claims 8-50 and 52-57 are rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta (EP 0 501 791) in combination with Kilgour et al. (US 6,262,170). This rejection is respectfully traversed.

The disclosure of Sakuta is discussed above. In the rejection, the disclosure of Kilgour et al. is relied on for its disclosure of using aluminum compounds in antiperspirant compositions and skin care compositions that contain, for example, vitamin C.

The personal care compositions disclosed by Kilgour et al. contain a cross-linked alkyl substituted silicone elastomer which is said to comprise a cross-linked hydrosilylation reaction product of:

- (i) an alkenyl functional silicone compound;
- (ii) a silylhydride functional silicone compound; and
- (iii) one or more  $\alpha,\beta$ -ethylenically unsaturated alkenes.

However, the Kilgour et al. disclosure is devoid of any suggestion of a silicone polymer that contains any oxyalkylene units or other hydrophobic structures. Thus, Kilgour et al. provide no suggestion for modifying the compositions of Sakuta that contain an silicone polymer having oxyalkylene units.

In view of the above remarks, it is respectfully submitted that the disclosure of Sakuta, alone or in combination with the disclosure of Kilgour et al., fails to render obvious the claimed invention. Withdrawal of the rejection is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Brion P. Heaney/

Brion P. Heaney (Reg. No. 32,542)

Attorney for Applicant(s)

**MILLEN, WHITE, ZELANO & BRANIGAN, P.C.**

Arlington Courthouse Plaza 1

2200 Clarendon Blvd., Suite 1400

Arlington, Virginia 22201

Telephone: (703) 812-5308

Facsimile: (703) 243-6410

Internet Address: heaney@mwzb.com

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